



Government of Guam
Hagåtña, Guam
96932

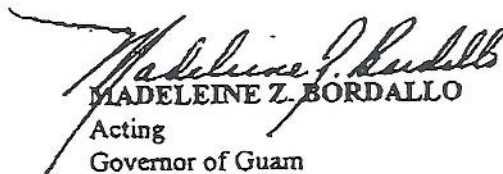
August 3, 1998


Policy Directives and Instructions Branch
Immigration and Naturalization Service
425 I Street, NW
Room 5307 Washington, DC 20536


Dear Sir/Madam:

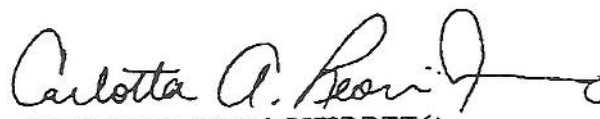
Please find three copies of Guam's comments to the proposed INS regulations on the rights of Habitual Residents in Guam pursuant to U.S. P.L. 99-239 (INS Ref. Number 1811-96). The comments represent the response of the Executive and Legislative Branches of the Government of Guam, and the Office of the Delegate to U.S. Congress.

Sincerely,


MADELEINE Z. BORDALLO
Acting
Governor of Guam


ANTONIO R. UNPINGCO
Speaker
24th Guam Legislature


ROBERT A. UNDERWOOD
Member
U.S. House of Representatives


CARLOTTA LEON GUERRERO
Chairperson, Committee on Transportation,
Telecommunications, and Micronesian Affairs
24th Guam Legislature
President, Pacific Islands Legislatures

COMMENTS BY GUAM ON THE
PROPOSED INS REGULATIONS ON THE
RIGHTS OF HABITUAL RESIDENTS IN GUAM
PURSUANT TO U.S. P.L. 99-239
(INS REFERENCE NUMBER 1811-96)

The proposed rule, adding governing rights and limitations on "habitual residents" pursuant to the Compacts of Free Association between the United States and the Freely Associated States (FAS) of the Republic of Marshall Islands, the Federated States of Micronesia and the Republic of Palau are, in general, welcomed. Nondiscriminatory limitations on habitual residence under the terms of the agreements between the U.S. government and the FAS are important to Guam in view of the significant impact which undefined and unregulated migration from the FAS has had on Guam since the implementation of the agreements beginning in 1986.

It must be noted that Guam was not a party to the terms of the agreements between the U.S. government and the various FAS governments, agreements which include provisions for migration to the U.S. and its territories and commonwealths. Guam, however, has become host to the greatest number of FAS citizens who have migrated under these agreements. At present, the estimated number on Guam of citizens from the FAS and their dependents is 10,000. As a result, Guam has borne significant educational and social costs associated with the migration of FAS citizens to Guam and their utilization of the social infrastructure of Guam.

In view of the continuing impact of FAS migration, the unfunded federal expectation of Guam's service provision and the overlay of a provision that allows for nondiscriminatory limitations on FAS migration under the Compact agreements, Guam believes four items need further delineation in the proposed rule:

- (1) that the minimum income level requirement be in accordance with the provisions of the Compact agreements;
- (2) that a registration system be implemented for ensuring compliance with the Compact agreements and the proposed rule;
- (3) that explicit mechanisms for consultation, coordination and information sharing between the appropriate instrumentalities of the government of Guam and the Service be established; and
- (4) that resources to enforce the proposed rule come from revenues collected by the Service operations in Guam, including revenues occurring as a result of existing operations and new cost-based sources related to specific requirements in effectively implementing the rule.

1. Providing that the minimum income level requirement in the rule be in accordance with the provisions of the Compact Agreement.

While the Compact agreements waive the provisions of former 8 U.S.C. §§1182(a)(14), (20), and (26), now 8 U.S.C. §§1182(a)(5)(A), (7)(A), and (7)(B), for qualified FAS citizens who desire to enter into, work and reside in the United States and its territories and commonwealths, the Compact agreements do not waive the provisions of 8 U.S.C. §1182(a)(4), which bars admission of alien entrants likely to become a public charge.

The importance which is placed on this ground of admissibility is reflected in the fact that such basis of inadmissibility is made applicable to all classes of entrant aliens across the board. The official poverty guidelines announced by the Department of Health and Human Services ("official poverty guidelines") are used as a benchmark by both the Service and State Department in making the public charge determination. However, the proposed rule would permit habitual residents to remain in U.S. territories and commonwealths without meeting the official poverty guidelines, which is seemingly inconsistent with the intent of the Compact agreements. Under the proposed rule, a principal habitual resident and all of his or her dependents, as defined by the rule would be eligible to establish habitual residence in lawful nonimmigrant status based on the principal habitual resident being employed for forty hours per week regardless of whether the income earned in such employment meets the official poverty guidelines for the appropriate family size.

In the background to the proposed rule, the Service discusses the need for provisions that would allow for seasonal employment by FAS citizens.

Presumably, it is for that reason that the proposed rule allows habitual residents to maintain nonimmigrant visa status through employment of 40 hours per week, irrespective of the official poverty guidelines.

However, seasonal workers should not be subject to the limitations on residency contained in the proposed rule, since the definition of habitual residence requires a FAS citizen to be present in a territory or commonwealth for a cumulative period of 12 months within a continuous 24-month period. The

proposed rule, by allowing habitual residency to be maintained solely on employment for 40 hours per week, is contrary to the provisions of the Compact agreements barring admission of alien entrants likely to become a public charge as well as to the intent of the Compact agreements not to cause any adverse consequences to the United States, territories and commonwealths, as set forth in the Statement of Congressional intent contained in 48 U.S.C. §1904(e)(1).

It should further be noted that even if the principal habitual resident and his or her dependents, as defined by the proposed rule, are required to meet the official poverty guidelines for the appropriate family size, the family size used for calculating the guidelines under the proposed rule excludes all dependents attending school full-time, in that FAS citizens engaged in full-time studies are not considered to be habitual residents under §461(g) of the Compact agreements and §214.7(a)(4)(i) of the proposed rule. Since, historically, the majority of principal habitual residents do have children attending school, excluding dependents attending school full-time from the determination of family size for purposes of compliance with the official poverty guidelines is, in effect, more liberal than the standard generally used for the public charge determination under 8 U.S.C. §1182(a)(4). Thus, the proposed rule, in this respect, also goes beyond the scope of the Compact agreements.

2. Implementation of a Registration System.

Guam believes that the proposed rule itself raises the need to establish a registration system for habitual residence in order to:

- (a) Ensure compliance with the requirements of habitual residence;
- (b) Apply adequate enforcement procedures that result in the application of nondiscriminatory limitations; and
- (c) Provide assurance for Guam that the benefits of the Compact agreements, which are available to habitual residents, are extended and, where extended by the government of Guam, that bona fide personal identification information serves as a baseline for Guam service providers when identifying reimbursement costs.

Guam strongly believes that in the absence of a registration system, the limitations which are to be imposed under the

information system can be established which serves as a nondiscriminatory identifier of FAS citizens in Guam who do not meet the requirements of habitual residency.

Additionally, in that the purpose of implementing the limitations on habitual residency to be contained in the rule is also, presumably, to lessen the adverse consequences to the United States, territories and commonwealths in accordance with the Statement of Congressional intent contained in 48 U.S.C. §1904(e)(1) and to further redress those adverse consequences as set forth in the Commitment of Congress contained in 48 U.S.C. §§1904(e)(4) and (5), a coordinated information system with the Service is essential in order to obtain the data necessary for such assessment.

4. The Necessary Resources to Enforce the Rule Should Come from Revenues Collected by the Service Operations in Guam.

Guam believes that resources to enforce the proposed rule should come from revenues collected by the Service operations in Guam, including revenues occurring as a result of existing operations and new cost-based sources related to effective implementation of the rule. As stated above, it is well established that the costs of the Service operations in Guam are less than half of the revenues which are attributable to inspections and other operations on the island. It is the view of Guam that funds collected by the Service should be used for such purposes as:

(a) Programs (getting APIS to FAS ports; coordination with FAS governments on addressing document-breeder issues; information system establishment, maintenance and continuing development; awareness programs; registration programs);

(b) Personnel (staffing with the appropriate complement, adding new personnel from Guam sources where possible); and

(c) Cost-based initiatives, where appropriate (e.g. registration system).